IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2808 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

N M PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2808 of 1992

MR ARUN H MEHTA for Petitioners

MR AD OZA, G.P., for Respondents

CORAM : MR. JUSTICE J.M.PANCHAL

Date of decision: 20/12/2002

ORAL JUDGEMENT

By filing instant petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, order or direction to quash communication dated March 30, 1992, addressed by the State Government to the Gujarat Secondary Education Board ("the Board" for short) directing the Board to nominate the District Education Officer or a Gazetted Officer authorized by him, as a representative of the Board on the school staff selection committee to be constituted under Section 35 of the Gujarat Secondary Education Act, 1972 ("the Act" for short). The petitioners have further prayed to quash the letter dated April 6, 1992, addressed by the Secretary of the Board to all the District Education Officers intimating them that the State Government has directed, under Section 48 of the Act, the Board to nominate the District Education Officer or a Gazetted Officer authorized by him, as a representative of the Board on the School Staff Selection Committee to be constituted under Section 35 of the Act, and that the said direction should be implemented with effect from March 30,1992.

2. Section 3 of the Act provides for constitution and incorporation of the Board. The Board consists of a Chairman, Deputy Chairman and Members as contemplated by Section 3(2) of the Act. The petitioners have claimed that they are members of the Board, but in the affidavit-in-reply filed on behalf of the respondent No.2 on December 13, 2002, it is mentioned that out of 15 petitioners, only petitioner Nos.1 & 2 are members of the Board. Section 35 of the Act provides that the registered private secondary schools must have selection committees as indicated therein, and it, inter-alia, stipulates that the school staff selection committee shall consist of the members as mentioned in Section 35(2), one of whom will be one representative of the Board to be nominated by the Board.

3. The petitioners were nominated as representatives of the Board on the different selection committees for different registered private secondary schools as required by Section 35 of the Act. The Government was of the view that having regard to the amount of grant made available to the registered private secondary schools and larger interest of the students, teachers and public at large, it was necessary that the Board should nominate the District Education Officer or a Gazetted Officer authorized by him, as a representative of the Board on the school staff selection committee to be constituted under Section 35 of the Act. Therefore, by exercising the powers under Section 48 of the Act,the Government

issued direction dated March 30, 1992 to the Board to nominate the District Education Officer or a Gazetted Officer authorized by him, as a representative of the Board on the school staff selection committee. By the said communication, the Government also directed the Board to send necessary proposal for amendment of Section 35 of the Act. The said direction is produced on the record of the petition at Annexure-I along with affidavit-in-reply filed on behalf of respondent No.2. On receipt of the above-referred to direction, the Secretary of the Board issued a communication dated April 6, 1992 to all the District Education Officers informing them that the Government has directed the Board under Section 48 of the Act to nominate the District Education Officer or a Gazetted Officer authorized by him, as a representative of the Board on the school staff selection committee, and that the said direction is to be implemented with effect from March 30, 1992. The said communication is produced by the petitioners at Annexure-A to the petition. The case of the petitioners is that Section 48(1) of the Act does not confer any power on the State Government to issue directions to the Board as to whom and how the Board should nominate its representative on the school staff selection committee and, therefore, the direction issued by the Government as well as communication addressed by the Secretary of the Board to all the District Education Officers, should be set aside. What is maintained by the petitioners is that the State Government has no authority, power or jurisdiction to issue any direction under Section 48 of the Act to nominate the District Education Officer and/or any other Gazetted Officer as its representative on the school staff selection committee and, therefore, the petitioners are entitled to the reliefs claimed in the petition. It is averred in the petition that the Board, of its own, has not issued any communication calling upon the petitioners to show cause as to why their tenure as representatives of the Board on the school staff selection committee should not be terminated, but their tenure has been abruptly brought to an end pursuant to the direction given by the Government under Section 48 of the Act, which is illegal. Under the circumstances, the petitioners have filed instant petition and claimed reliefs to which reference is made earlier.

4. On service of notice, Mr. B.C.Yadav, Under Secretary, Education Department, Sachivalaya, Gandhinagar, has filed reply affidavit stating, inter alia, that the Government has power under Section 48(1) of the Act to issue directions to the Board as to whom and how the Board should nominate its representative on

the school staff selection committee and, therefore, the petitioners are not entitled to the reliefs claimed in the petition. It is pointed out in the said reply that the Board by its own resolution had appointed a sub-committee for nominating its representative on the school staff selection committee and constitution of sub-committee being illegal, the Government is justified in issuing direction under Section 48(1) of the Act. What is highlighted in the reply is that having regard to the larger interest of the students, teachers etc., the direction issued by the Government should be upheld and the petition should be dismissed.

5. Mr. Gangaram, son of Kashiram Vastaram Patel, Secretary of the Board, has filed affidavit-in-reply on behalf of the Board stating, inter alia, that in view of the direction issued by the Government vide its letter dated March 30, 1992, the Board has asked the District Education Officers or the Gazetted Officers to be authorized by the District Education Officers to act as representatives of the Board on the school staff selection committees to be constituted under Section 35 of the Act. It is also averred in the said reply that out of 15 petitioners, 13 petitioners are not members of the Board and, therefore, the petition should be dismissed as having become infructuous. Shri Gangaram has filed further affidavit-in-reply on behalf of respondent No.2 on December 20, 2002 stating therein that the Board had resolved on January 29, 1987 to constitute a Committee to make suggestions and procedure to be adopted by the Board, but the suggestions made by the said sub-committee are not implemented because of the stay granted by the Court in instant petition. It is also emphasised that the Board was represented by the members, who were elected from different constituencies, managements, principals, teachers etc., but there was no member on the selection committee to protect the interest of the Government, though the Government is paying 100% grant towards the salary of the employees and 20% grant for maintenance and, therefore, the petition should be dismissed.

6. The Court has heard the learned counsel for the parties, as length and in detail, and considered the documents forming part of the petition. A bare perusal of Section 35(2)(iv) of the Act would indicate that the Board has power and authority to nominate one representative of the Board on the school staff selection committee to be constituted for every registered private secondary school. The relevant part of Section 48(1) of the Act, which is sought to be relied upon by the learned

counsel for the respondents, reads as under :-

"48(1) The State Government shall have the power, after considering the advice, if any, tendered by the Board to issue to the Board such directions as it may consider necessary in regard to all or any of the matters specified in section 17. The Board shall comply with such directions."

On reading Section 48(1) of the Act, it becomes at once clear that the State Government has power to issue to the Board such directions as it may consider necessary in regard to all or any of the matters specified in Section 17 and the Board has no option, but to comply with such directions.

Section 17 of the Act enumerates powers and duties of the Board, but does not contain any provision as to who should be nominated as Board's representative on the school staff selection committee or in which manner the said power should be exercised. Nomination of one representative of the Board by the Board on a school staff selection committee being not one of the powers or duties of the Board enumerated in Section 17 of the Act, the Court is of confirmed opinion that the direction contained in letter dated March 30, 1992 to the Board to nominate the District Education Officers or Gazetted Officers authorized by them, on the staff selection committee could not have been issued by the State Government. There is no manner of doubt that the Board, which is statutory in character, is entitled to nominate its one representative on the school staff selection committee and that power has to be exercised by the Board and not by the State Government. It is not the case of the respondents that the Board has decided to nominate the District Education Officers or the Gazetted Officers authorized by them as representatives of the Board. The State Government, therefore, while exercising power under Section 48(1) of the Act, could not have directed the Board to exercise its power of nominating a representative of the Board on the school staff selection committee in a particular manner. By the impugned direction dated March 30, 1992, the State Government, in purported exercise of powers under Section 48(1) of the Act, has over reached the provisions of Section 35(2) of the Act, which is not permissible. As envisaged by Section 48(2) of the Act, the State Government can address a communication to the Board and express its views in the matter of nomination of District Education Officer or a Gazetted Officer authorized by him, as a

representative of the Board on the school staff selection committee, or the Board, on its own, can decide to nominate the District Education Officer or any Gazetted Officer authorized by him, as a representative of the Board on the said Committee, but the State Government has no power under Section 48(1) of the Act to direct the Board that nomination of a particular officer should be made as desired by the Government. Therefore, the direction dated March 30, 1992 as well as the communication dated April 6, 1992 addressed by the Secretary of the Board to all the District Education Officers, are liable to be quashed.

For the foregoing reasons, the petition succeeds. The direction dated March 30, 1992 issued by the State Government under Section 48 of the Act to the Board to nominate the District Education Officer or any other Gazetted Officer authorized by him, as a representative of the Board on the school staff selection committee, is hereby quashed. So also, the communication dated April 6, 1992 addressed by the Secretary of the Board to all the District Education Officers informing them that the direction issued by the Board and asking them to act as nominated representative of the Board, is also quashed. Rule is made absolute. There shall be no order as to costs. Interim relief granted earlier by order dated May 6, 1992 is hereby vacated.

(J.M.Panchal,J.)

(patel)